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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/595,601	04/28/2006	William Suttle Peters	13634-4011	3338
34313 7590 12/31/2008 ORRICK, HERRINGTON & SUTCLIFFE, LLP IP PROSECUTION DEPARTMENT 4 PARK PLAZA SUITE 1600 IRVINE, CA 92614-2558				
EXAMINER BEHRINGER, LUTHER G				
ART UNIT 3766		PAPER NUMBER		
MAIL DATE 12/31/2008		DELIVERY MODE PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### **DETAILED ACTION**

1. This office action is in response to the communications received on 07/17/2008 and 10/21/2008 concerning application no. 10/595601 filed on 04/28/2006.

#### ***Response to Arguments***

2. Applicant's arguments with respect to claim(s) 1 – 38 have been considered but are moot since applicant has withdrawn claim(s) 1 – 38.

#### ***Claim Objections***

3. Amendments to the claims have obviated the necessity of the objections raised in the action dated 05/05/2008. Therefore, those objections are withdrawn.

#### ***Election/Restrictions***

4. Newly submitted claim(s) 39 – 48 directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: The newly submitted claims recite a "means for generating fluid pressure," differing in scope from a method and apparatus for controlling the operation of a pulsatile heart assist device.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claim(s) 39 – 48 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

5. The amendment filed on 12/23/2008 canceling all claims drawn to the elected invention and presenting only claims drawn to a non-elected invention is non-responsive (MPEP § 821.03). The remaining claims are not readable on the elected invention because the means plus function language presented in the amendment broadens the scope of the original invention.

Since the above-mentioned amendment appears to be a *bona fide* attempt to reply, applicant is given a TIME PERIOD of ONE (1) MONTH or THIRTY (30) DAYS, whichever is longer, from the mailing date of this notice within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD UNDER 37 CFR 1.136(a) ARE AVAILABLE.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LUTHER G. BEHRINGER whose telephone number is (571)270-3868. The examiner can normally be reached on Mon - Thurs 8:00 - 5:30; 2nd Friday 8:00 - 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Layno can be reached on (571) 272-4949. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Carl H. Layno/  
Supervisory Patent Examiner, Art Unit 3766

/Luther G Behringer/  
Examiner, Art Unit 3766